

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

United States of America,

Plaintiff,

v.

Demonte Johntrell Latimore,

Defendant.

ORDER

Criminal No. 12-83 ADM/JJG

Civil No. 16-2255 ADM

Clifford B. Wardlaw, Esq., Assistant United States Attorney, Minneapolis, MN, on behalf of Plaintiff.

James S. Becker, Esq., and Robert H. Meyers, Esq., Office of the Federal Defender, on behalf of Defendant.

This matter is before the undersigned United States District Judge for a ruling on Defendant Demonte Johntrell Latimore's Amended Motion to Vacate Sentence Under 28 U.S.C. § 2255 [Docket No. 46]¹ (the "Motion"). Latimore moves to vacate his 180-month sentence, which was imposed pursuant to the Armed Career Criminal Act ("ACCA"), 18 U.S.C. § 924(e)(2)(b). Plaintiff United States of America (the "Government") agrees that Latimore's three prior felony convictions for burglary in Minnesota—two for second degree burglary and one for third degree burglary—are no longer predicate offenses under the ACCA, in light of the Supreme Court's decision in Mathis v. United States, 136 S. Ct. 2243 (2016) and the Eighth Circuit's recent decision in United States v. McArthur, —F.3d—, 2017 WL 744032 (8th Cir. Feb. 23, 2017).

¹ All docket citations are to the Criminal Docket.

Based on Mathis and McArthur, the Court finds that Latimore no longer qualifies as an armed career criminal pursuant to 18 U.S.C. § 924(e), that his sentence should be vacated, and that he should be resentenced under 18 U.S.C. § 924(a)(2) to a term of imprisonment of no greater than ten years.

Accordingly, **IT IS HEREBY ORDERED** that:

1. Defendant Demonte Johntrell Latimore's Amended Motion to Vacate Sentence Under 28 U.S.C. § 2255 [Docket No. 46] is **GRANTED**;
2. Defendant shall be resentenced on **Thursday, April 20, 2017 at 11:00 a.m. in Courtroom 13W, Minneapolis, Minnesota**;
3. Defendant shall remain in custody pending the resentencing hearing; and
4. The U.S. Probation Office shall prepare a supplemental Presentence Investigation Report in advance of the resentencing hearing.

BY THE COURT:

s/Ann D. Montgomery
ANN D. MONTGOMERY
U.S. DISTRICT JUDGE

Dated: March 9, 2017.